

The opinion in support of the decision being entered today was not written for publication in a law journal and is not binding precedent of the Board.

Paper No. 27

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BOARD OF PATENT APPEALS  
AND INTERFERENCES

## UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCESEx parte LARRY R. MARSHALL and PENNY SIMPSON STEINAppeal No. 2002-1003  
Application No. 08/914,409

ON BRIEF

Before KIMLIN, OWENS and TIMM, Administrative Patent Judges.KIMLIN, Administrative Patent Judge.DECISION ON APPEAL

This is an appeal from the final rejection of claims 2-7, 9-12, 14-19 and 26, all the claims remaining in the present application. Claim 12 is illustrative:

12. A synthetic sheet material comprised primarily of flash-spun plexifilamentary nonwoven fibers, said sheet material having a hydrostatic head pressure of at least about 75 cm of water, a Gurley Hill Porosity of less than about 15 seconds, and an MVTR-LYSSY, measured according to ASTM E398-83, of at least 1300g/m<sup>2</sup>/day.

Appeal No. 2002-1003  
Application No. 08/914,409

Appellants maintain at page 5 of the Reply Brief that they "believe it is incumbent upon the Board to determine whether or not examiners can rely on a *per se* rule of indefiniteness, as set forth in *Ex parte Slob*" (second paragraph). Suffice it to say that it is by now axiomatic that each case must be decided on its own underlying facts and that *per se* rules, whether applied to prior art or § 112 rejections, are, *per se*, verboten.

One final point remains. The examiner, for some reason, did not include claim 19, which defines a protective garment comprising the sheet material of claim 12, in the rejection under 35 U.S.C. § 112, second paragraph. In the event of further prosecution of the subject matter at bar, e.g., in a continuing application, the examiner should consider the rejection of claim 19 as well.

In conclusion, based on the foregoing, the examiner's rejection of claims 2-7, 9-12, 14-18 and 26 under 35 U.S.C. § 112, second paragraph, is affirmed. The 35 U.S.C. § 102(b) rejection over Dempsey is reversed. The rejection of claims 2-7, 9-12, 14-18 and 26 under 35 U.S.C. § 103 over Shin in view of Steuber and Dempsey is affirmed, as is the rejection of claim 19 under 35 U.S.C. § 103 over the combined teachings of Shin,

PTO/SB/31 (08-03)  
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<b>NOTICE OF APPEAL FROM THE EXAMINER TO THE BOARD OF PATENT APPEALS AND INTERFERENCES</b>		Docket Number (Optional)  <b>TK3410USNA</b>
I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to "Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450" on <u>November 11, 2003</u> Signature <u>Frances G. Lestardo</u> Typed or printed name <u>FRANCES G. LESTARDO</u>		In re Application of <b>Robert Anthony Marin Et. Al.</b> Application Number <u>09/691,273</u> Filed <u>October 18, 2000</u> For <b>FLASH-SPUN SHEET MATERIAL</b> Art Unit <u>1771</u> Examiner <u>LYNDA SALVATORE</u>

Applicant hereby appeals to the Board of Patent Appeals and Interferences from the last decision of the examiner.


The fee for this Notice of Appeal is (37 CFR 1.17(b)) \$ 330.00

☐ Applicant claims small entity status. See 37 CFR 1.27. Therefore, the fee shown above is reduced by half, and the resulting fee is: \$ \_\_\_\_\_  
☐ A check in the amount of the fee is enclosed.  
☐ Payment by credit card. Form PTO-2038 is attached.  
☐ The Director has already been authorized to charge fees in this application to a Deposit Account. I have enclosed a duplicate copy of this sheet.  
☒ The Director is hereby authorized to charge any fees which may be required, or credit any overpayment to Deposit Account No. 04-1928. I have enclosed a duplicate copy of this sheet.  
☒ A petition for an extension of time under 37 CFR 1.36(a) (PTO/SB/22) is enclosed.

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I am the

☐ applicant/inventor.  
☐ assignee of record of the entire interest. See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/98)  
☒ attorney or agent of record. Registration number 37,013  
☐ attorney or agent acting under 37 CFR 1.34(a). Registration number if acting under 37 CFR 1.34(a): \_\_\_\_\_

  
 Signature  
THOMAS W. STEINBERG  
 Typed or printed name  
(302) 892-0887  
 Telephone number  
11/11/03  
 Date

NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below.

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This collection of information is required by 37 CFR 1.101. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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